

REMARKS

Applicants are somewhat confused by the Examiner referring to 35 U.S.C. § 121 when the requirement appears to be an election of species rather than an election of separate inventions under a restriction requirement. 35 U.S.C. §121 specifically refers to an instance where two or more independent and distinct inventions are claimed in one application and there is a restriction to one of the inventions. When a restriction is made, a patent issuing on an application with respect to an application filed as a result of such a restriction requirement "shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application." This means that an obviousness double patenting rejection is inappropriate in the instance of a divisional application filed after a restriction requirement.

In the case of an election of species requirement rather than a restriction requirement, if there is a generic claim which is held to be allowable, species other than the elected species may be allowable if the generic claim is held to be allowable. This indicates that the inventions are not distinctly independent, since they are tied by the generic claim. The Examiner acknowledges that Claims 37 - 39 and 43 are generic to the invention. It would follow that the rule pertaining to obviousness double patenting would not be applicable with respect to claims allowed as different species of a generic claim. This has important implications and **applicant's attorney is hereby requesting that the Examiner make it clear whether he is making a restriction requirement or only an election of species requirement.**

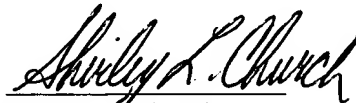
The claims have been amended to make it clearer which steps were performed previously, causing deposits to form on process chamber walls, and which steps are being performed presently, to remove at least a portion of the previously formed deposits while etching a substrate in the process chamber. Applicants welcome any additional suggestions the Examiner may have as to how to make the claims clearer and more easily understood.

In response to the election requirement, applicants hereby elect to initially prosecute Species 1) listed in the Office Action: use of a plasma etchant which is comprised of a fluorine based compound in combination with a bromine based compound.

The claims which clearly read upon the elected species are: Claims 37, 38, 39, 40 - 42, and 43. Claims 44 - 46 may also be considered to read on the elected species, since oxygen added to the plasma source gas comprising a fluorine-containing compound and a bromine-containing compound would provide a plasma source gas comprising a halogen-containing compound (or a fluorine-containing compound) and oxygen; and the addition of oxygen in this fashion is described in applicants' Specification at Page 15, lines 8 - 29.

Applicants believe that the claims as amended are in condition for allowance, and the Examiner is respectfully requested to enter the requested amendments and to pass the application to allowance. The Examiner is invited to contact applicants' attorney with any questions or suggestions, at the telephone number provided below.

Respectfully Submitted,



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